

polito trial transcript 11-21-03

23 depositions, sometimes lasting three or four days.

24 Q. Now, your primary gainful activity for the last 20

25 years has been as an expert witness, correct?

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 586

2 A. That's been the source of most of my income. Most of
3 my time has been spent on other things.

4 Q. And you charge three hundred dollars an hour to do
5 that, correct?

6 A. That's my present rate, yes.

7 Q. You charge for your travel time?

8 A. Yes.

9 Q. You charged to come over here last night?

10 A. My travel time.

11 Q. From Baltimore, right?

12 A. Right.

13 Q. You charged to meet with Mr. Long?

14 A. Right.

15 Q. You will charge to travel back home today, correct?

16 A. Yes.

17 Q. And for the last ten years or so, anyway, you have
18 made between a hundred and fifty to two hundred thousand
19 dollars a year just being an expert in asbestos litigation,
20 correct?

21 A. Something like that.

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22 Q. And you have made about two million dollars in the
23 last 20 years just being an expert in asbestos cases, correct?
24 A. If you add up the total for 20 years, that's about
25 what you would get.

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 587
2 Q. And every single time you have been in a case where
3 you were testifying against a company or entity that either
4 made or used an asbestos-containing product, correct?
5 A. It is true that I have never actually testified on
6 behalf of any company that made asbestos products, yes.
7 Q. You have --
8 A. I agreed to in one case, but the case never went to
9 trial.
10 Q. You consider yourself a crusader against the use of
11 asbestos anywhere in the world, don't you?
12 A. I consider myself a public health worker. I work with
13 people around the world who are trying to ban asbestos, that's
14 correct.
15 Q. You're not trained in any of the medical arts?
16 A. My field is public health. Public health subsumes
17 medicine, engineering, law, and economics. These are all the
18 disciplines that go into doing public health work.
19 Q. You're not licensed to practice medicine?
20 A. No.
21 Q. You have never been to medical school?

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- 22 A. Only as a guest lecturer.
23 Q. You can't treat patients, can you?
24 A. I don't attempt to practice medicine without a
25 license.

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- 1 DR. CASTLEMAN - CX BY MR. THACKSTON 588
2 Q. Now, let's go back -- you were kind enough to give
3 Mr. Long your date of birth, which is 1946, correct?
4 A. Right.
5 Q. And you graduated from college in 1968?
6 A. Right.
7 Q. I have got a little chart I'm keeping, but I left it
8 over there. Now, your first job was for Hercules Chemical
9 Company, correct?
10 A. Right.
11 Q. And you were fired?
12 A. No, technically I was told by the director of the
13 research center that I was not being fired for complaining
14 about the way they were disposing of hazardous wastes and
15 reporting them to the local authorities.
16 Q. But they let you go?
17 A. They told me to leave a couple of days ahead of my
18 scheduled departure.
19 Q. And so for the next year, you didn't work at all. You
20 just hitchhiked around the world, correct?

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21 A. I spent a year traveling.
22 Q. You went to the Middle East and Africa, right?
23 A. Middle East, North Africa, Mexico, all over this
24 country.
25 Q. And you came back to Baltimore, and you got a job with

DR. CASTLEMAN - EX BY MR. THACKSTON 589
1 the health department, right?
2 A. Well, no, I went back to school. I got my master's
3 degree, and then I went to work for the Baltimore County Health
4 Department.
5 Q. Now, that's the only -- you call yourself -- you
6 consider yourself a public health professional, correct?
7 A. Right.
8 Q. But the only time you have been employed by a
9 government doing public health work was the year you spent with
10 the Baltimore County Health Department, correct?
11 A. That's the only time I had full-time employment. I
12 have had consulting work with numerous governmental agencies
13 which I have already listed for the jury.
14 Q. And you worked for the Baltimore County Health
15 Department as an inspector for a year, right?
16 A. Year and a half -- well, I described my duties there.
17 Q. And then they fired you?
18 A. There was some controversy over my testifying at a
19 congressional hearing about the use of asbestos in society. I
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21 was invited to testify before a U. S. Senate committee, and I
22 named the names of the hardware store that was selling asbestos
23 in brown paper bags marked 89 cents. I described my attempts
24 to warn brake mechanics in 1972.

25 MR. THACKSTON: Your Honor, I object to

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1 DR. CASTLEMAN - OK BY MR. THACKSTON 590
2 everything after yes.

3 THE COURT: No, it's responsive to your question
4 as asked.

5 Q. Okay.

6 A. And I was then told by the health officials at the
7 health department that I would have to be -- that I would have
8 to leave my job. I threatened to sue them for violating my
9 right of free speech, and the health department relented in the
10 end, paid full back pay for the five weeks that I was out of
11 work, and I returned to my job. And at that point I decided I
12 was ready to move on and gave them notice. I was not fired
13 from that job.

14 Q. What year was that when you decided to move on?

15 A. 1973.

16 Q. And then you went to work for Maryland Public Interest
17 Research Group?

18 A. Not right away. First for another group called the
19 Center for Science and the Public Interest in Washington, and

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20 then for a group called American Public Research Group run by
21 college students at the University of Maryland.

22 Q. And if you would, please, try to do your best to
23 answer that question yes or no. They fired you, as well?

24 A. They did. And I became an independent consultant and
25 have been ever since 1975.

1 DR. CASTLEMAN - CX BY MR. THACKSTON 591

2 Q. Now, you took the doctoral thesis you wrote and made
3 it into your book, right?

4 A. I published the doctoral thesis as a book, as well.
5 There were some additional materials in the book that didn't
6 appear in the doctoral thesis, including the chapter on
7 substitutes for asbestos products.

8 Q. Well, the materials that you have included in your
9 book along the way are materials that have been sent to you by
10 plaintiffs' lawyers, correct?

11 A. Not all of them, but the internal corporate documents
12 for the most part came from lawyers. Some of them came from
13 defense counsel. I always invite you guys to provide me with
14 documents when you depose me, but most of the documents that I
15 receive have been produced by defendants and then provided to
16 me by the plaintiffs.

17 Q. Now, you have taken chapters of the books, in fact,
18 and sent it to plaintiffs' lawyers for their review for
19 publication, correct?

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20 A. Very first time I wrote the book, I sent a few of the
21 chapters to a few of the plaintiffs' lawyers, mainly to see if
22 they were correct, if the corporate knowledge chapter, for
23 example, was correct and complete.

24 Q. For example, you wrote a chapter one time about
25 Westinghouse; is that right?

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 592

2 A. I included a chapter on Westinghouse in the most
3 recent edition of the book. It had not appeared until the 1996
4 edition of the book.

5 Q. You based it exclusively on documents sent to you by
6 plaintiffs' lawyers?

7 A. No, there were other things I obtained independently
8 and included it in the chapter.

9 Q. You never sent it to anyone in Westinghouse and said,
10 "Can I have your comments on this before I publish this?"

11 A. The only person I sent it to before I published it was
12 Mike Wallace at 60 Minutes.

13 Q. You don't consider that somebody at Westinghouse,
14 would you?

15 A. Actually, it was. Westinghouse had just bought CBS,
16 and I was sending my condolences.

17 Q. It was the other way around; CBS bought
18 Westinghouse --

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19 A. No, as I understand it -- I'm not an expert on
20 corporate mergers, but Westinghouse was renamed CBS soon after
21 this event.

22 Q. The company Westinghouse doesn't exist anymore, does
23 it?

24 A. Not as Westinghouse.

25 Q. Now, basically, when you have been asked that question

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 593

2 before, have you ever sent corporate knowledge chapters to any
3 lawyer who represented the defendants or the companies, your
4 answer has been "No, I haven't"?

5 A. Prior to publishing, that's right. I mean the defense
6 lawyers go through what I publish minutely after it gets
7 published.

8 Q. And the people that publish this book are a law book
9 publishing company, right?

10 A. Well, they publish a book -- I guess they are
11 primarily a law book publisher, but the books are available in
12 public health libraries and medical libraries, as well as law
13 libraries.

14 Q. Now, after you published this book, there's been some
15 criticism of it, has there not?

16 A. Mostly by defense lawyers.

17 Q. Well, you talk in your book about Merewether, right,
18 and what the Merewether study meant, right?

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- 19 A. Yes.
20 Q. And Merewether was in England in the 1930s?
21 A. Right.
22 Q. And a gentleman who worked with Dr. Merewether in the
23 1930s sent a letter to what was the British Journal of
24 Industrial Medicine criticizing your book?
25 A. That's not quite the way it happened. I sent a letter

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- 1 DR. CASTLEMAN - CX BY MR. THACKSTON 594
2 to the British Journal of Industrial Medicine. I had been
3 approached by Dr. Selikoff to write such a letter, and I agreed
4 with the idea. I said, "Look, this guy has got it wrong about
5 the history of asbestos and about the way asbestos is being
6 used in the world today." And I wrote a criticism of what Dr.
7 Murray had published in the British Journal of Industrial
8 Medicine, and Dr. Murray wrote back a commentary which included
9 numerous personal attacks on me.
10 Q. Well, Dr. Murray, who you said had it wrong, was the
11 one who was out practicing industrial hygiene in England in the
12 1940s, correct?
13 A. In the 1940s, right, he was an old-timer. He had been
14 with the health -- the factory inspector in the 1940s.
15 Q. So you're aware of the criticism he published about
16 you in the British Journal of Industrial Medicine, correct?
17 A. Sure, I occasionally get it read to me on

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18 cross-examination.

19 Q. Let's do that, then. The first thing he says is,
20 "Mr. Castleman does not like asbestos. He does not like the
21 people who mine it, process it and adapt its products for sale.
22 His dislike has grown into an obsession and his obsession into
23 single issue fanaticism which closely resembles paranoia."
24 That's what Dr. Murray said about your book, correct?

25 A. That's what he wrote.

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 595

2 Q. He also says, "It is a pity that a book which has been
3 so painstakingly researched should start with a false premise
4 and arrive at entirely the wrong conclusions." That's what Dr.
5 Murray said, correct?

6 A. Correct.

7 Q. "It is the conclusion that is wrong, because it is
8 arrived at in advance of the evidence and derives from emotion
9 rather than scientific balanced appraisal.

10 "our main problem is that the effects of exposure are
11 delayed up to 40 years, during which time our expectations are
12 increasing and our diagnostic methods are improving, so that we
13 have to run fast just to stay in the same place.

14 "what Mr. Castleman does is to turn the spotlight, the
15 blinding light of hindsight, on what was a very obscure problem
16 and overilluminate it as though it had occupied the entire --
17 occupied center stage for the greater part of this century."

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18 That's what he said, correct?

19 A. You read correctly part of what he said.

20 Q. Now, you would agree with me that whatever you say
21 about what happened in England in the 1940s, you do say with
22 the benefit of hindsight, correct?

23 A. That's the only way you can do historical research
24 until they invent time machines, yes.

25 Q. It says, "I have not counted the emotional adjectives,

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 596
2 but the book is liberally besprinkled with them while the
3 author flogs himself into a lather of indignation. One early
4 example is a reference to the devastating pulmonary disease at
5 the beginning of the century. There was such a disease, but it
6 was called pulmonary tuberculosis, and this was such an ever
7 present disease, that when Dr. Murray discovered the first case
8 of asbestosis in 1899, he did not even publish it, even as a
9 medical curiosity."

10 Dr. Castleman, when you were doing your research, did you
11 know there was hundreds of articles out there about pulmonary
12 tuberculosis?

13 A. Sure.

14 Q. Is it true that Dr. Murray didn't even publish the
15 first case of asbestosis that he saw?

16 A. He didn't publish it as a medical article. It was

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 17 published as a -- part of his discussion with the departmental
 18 committee of the United Kingdom, as Murray points out, that it
 19 was part of governmental hearings.

20 Q. Dr. Murray also points out that, "At the beginning of
 21 the century, there was a great deal of interest in industrial
 22 disease. The priorities were lead and mercury poisoning from
 23 which people were obviously dying, and phossy jaw, which
 24 destroyed the beauty of young women. The occupational chest
 25 diseases were so obscured by tuberculosis that the department

1 DR. CASTLEMAN - CX BY MR. THACKSTON 597
 2 committee of 1907 in the United Kingdom found itself unable to
 3 define these diseases adequately for compensation purposes,
 4 even though the existence of potters' rot, grinders' asthma and
 5 ganister disease were well known.

6 "It was not until 1918 that the role of silica became
 7 manifest and that this became a priority in research into
 8 occupational pulmonary disease to such an extent as to limit
 9 the study of asbestos because it was a silicate. This was
 10 through until the 1950s when coal workers' pneumoconiosis took
 11 over center stage.

12 silica and coal dust are still as fibrogenic as they
 13 always were, but Mr. Castleman awards no medals to the medicine
 14 and hygiene professions for having controlled these problems."
 15 That's what Dr. Murray said, correct?

16 A. I wasn't writing about silica and coal dust, and I

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17 wouldn't award any medals for their control if I were to be
18 asked about that today.

19 Q. Did you know that health care professionals at this
20 time were dealing with things that I have never even heard of,
21 like grinders' asthma and ganister disease? Did you write
22 about any of that?

23 A. No, they are basically silicosis by different names.

24 Q. It says, "Instead, he concentrates singlemindedly on
25 his subject and accurately, for the most part, records the

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 598
2 references to asbestosis in the medical literature. What he
3 lacks is a broad view of the developing subject. He approaches
4 his task with the enthusiasm and intolerance of a new convert
5 who has discovered the secret of salvation."

6 Would you agree that you did not attempt to put what you
7 were recording, what you had found, in historical perspective?

8 A. I did put it in historical perspective. The first
9 part of the fourth chapter in my book is about the social
10 origins of efforts to prevent industrial disease. The first
11 part of chapter 3 is about the development and evolution of
12 workers' compensation laws. I don't just look at asbestosis,
13 but of course I focus on asbestos because that's -- that was
14 the subject of my doctoral thesis.

15 Q. When you say the first part of your book was about --

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16 Q. Well, Dr. Murray says about that, "Perhaps the most
17 ludicrous chapter is that concerning brake linings. First of
18 all, he confuses the manufacture of brake linings with their
19 repair and maintenance. Of all the references he quotes, there
20 is only one which refers specifically to garage mechanics, and
21 even there the effects are speculative.

22 "He does not find it surprising that millions of people
23 who have been exposed to asbestos from brake linings since the
24 beginning of the century have suffered rarely if at all from
25 asbestos-related disease." That's what Dr. Murray said,

1 DR. CASTLEMAN - CX BY MR. THACKSTON 600
2 correct?

3 A. You read correctly from Dr. Murray's personal attacks
4 on me.

5 Q. Finally, he says, "But I was there at the time, which
6 Castleman was not, and the main problem, so far as cancer was
7 concerned, were the bladder cancers in the chemical industry
8 and skin cancer in the cotton industry, both of which have been
9 brought under control. We did some things right in the 1940s
10 and the 1950s, though it has taken until now to appreciate it."
11 Did you look at whether bladder cancers and skin cancers were
12 major problems in the 1940s and fifties?

13 A. Bladder cancers remained major problems well beyond
14 the 1950s, skin cancers, too.

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15 Q. I think I said finally before but let me say finally
16 one more time. He says, "Not even Castleman can assert that
17 mesothelioma was known to be associated with asbestos before
18 1960, even though Merewether had referred to lung and pleural
19 cancer." Correct?
20 A. I think he's incorrect. I don't think Merewether
21 wrote about -- who -- what he's talking about is the annual
22 reports of the chief inspector of factories starting in 1949 --
23 for the year 1947, which did talk about cancers to have lung
24 and pleura being excessive in asbestosis victims.
25 Q. And they did not use the term "mesothelioma," correct?

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1 DR. CASTLEMAN - CX BY MR. THACKSTON 601
2 They just called it cancer of the pleura?
3 A. Right.
4 Q. I'm not going to say finally anymore, because I'm
5 wrong when I say it. He says, "We were in occupational cancer,
6 and we too had read Hueper." You talked about Hueper this
7 morning, correct?
8 A. Right.
9 Q. "Who, according to Merewether, was a cancerphile. I
10 never met him, but he was obviously a very nice man. If you
11 fire off in every direction, you are bound to hit something
12 some time, as he did. We had a job to do, and we couldn't
13 afford to use our limited resources in following up all of
14 Hueper's claims." That's what he said about Hueper?

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- 15 A. Yes, he even slammed Dr. Hueper.
16 Q. You never met Dr. Merewether, did you, sir?
17 A. No, Dr. Merewether died in 1970.
18 MR. THACKSTON: Is this a good time to break for
19 lunch, your Honor?
20 THE COURT: Members of the Jury, we will recess
21 until two o'clock. Have a good lunch.
22 (recess taken from 12:25 p.m. to 2:10 p.m.)
23 THE COURT: Good afternoon, Members of the Jury.
24 MR. THACKSTON: Your Honor, I have no further
25 questions for this witness.

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- 1 DR. CASTLEMAN - RDX BY MR. LONG 602
2 THE COURT: Anything further, Mr. Long?
3 MR. LONG: Yes.
4 REDIRECT EXAMINATION.
5 BY MR. LONG:
6 Q. Dr. Castleman, I want to get back to this criticism of
7 you by Dr. Robert Murray for a minute or two.
8 A. Sure.
9 Q. Was Dr. Murray responding to something you had
10 written, or was his the first article that appeared in this
11 exchange?
12 A. He was responding to something I had written.
13 Q. Did you have a co-author on that particular article

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14 you wrote?

15 A. In a sense, yes.

16 Q. Who was it?

17 A. Dr. Irving Selikoff.

18 Q. From where?

19 A. Mount Sinai Medical School of New York.

20 Q. And the topic of the -- well, first of all, was it a
21 letter you wrote or an article or a book or what?

22 A. It was what they call a commentary, I think. It was a
23 little long for a letter, but it was like a letter to the
24 journal.

25 Q. Okay. And what was the subject of your letter?

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1 DR. CASTLEMAN - RDX BY MR. LONG 603

2 A. The subject was I was taking issue with Murray over
3 the question of the availability of information in published
4 widely available medical journals that asbestos was the cause
5 of occupational cancer by 1945.

6 Q. And had you taken the position that it was or that it
7 was not?

8 A. I took the position that it was. I was disputing
9 Murray on this point, and I think I had sixty-one references in
10 my article.

11 Q. Sixty-one references to what?

12 A. Published and in some cases unpublished evidence that
13 it was known in the asbestos industry and in the medical world.

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- 14 that asbestos has been associated with occupational cancer.
15 Q. okay.
16 A. Articles published in the New England Medical Journal,
17 the Journal of the American Medical Association, and other
18 widely available medical and scientific journals.
19 Q. Were you critical of Dr. Murray in your publication?
20 A. Yes, I took issue with Dr. Murray, who had suggested
21 that there really wasn't much known about the subject of
22 asbestos and cancer through the World War II years.
23 Q. Do you know if Dr. Murray was affiliated with any
24 asbestos companies?
25 A. I know he at some -- eventually did become an expert

- 1 DR. CASTLEMAN - RDX BY MR. LONG 604
2 witness in the defense of the biggest asbestos company in
3 England, Turner and Newall, N-e-w-a-l-l.
4 Q. Dr. Murray wrote that article critical of you after
5 you wrote the first letter; is that correct?
6 A. Right, only mine made no personal attacks on him.
7 Q. Had you ever met him?
8 A. No, I never did meet Dr. Murray.
9 Q. Doctor, do you recall a guy named Christopher Columbus
10 who was criticized for saying the world was round?
11 A. So I understand.
12 MR. LONG: I don't have any other questions for

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you. Thank you.

MR. THACKSTON: Nothing further, your Honor.

THE COURT: All right. Thank you, Doctor.

Mr. Long.

MR. LONG: Your Honor, I think Mr. Flynn and Mr. Van Osta were working on the transcript of Mr. Polito's testimony, but I don't think it's done yet, so --

THE COURT: Do you want a short recess?

MR. LONG: I may not need it, your Honor, if I can find what I wanted to do next. Maybe you better give us a few minutes, if you don't mind.

THE COURT: All right, why don't you step down.

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2 (Jury excused at 2:15 p.m.)
3 THE COURT: Is this a transcript or tape?
4 MR. FLYNN: Transcript. We will need a few
5 minutes. It is a very long transcript, Judge. It is
6 over two hundred and sixty pages.
7 THE COURT: How are you going to present it?
8 MR. LONG: The way we talked about presenting it
9 is either Mr. von Diste or I take the podium as the
10 questioner, and the other one take the seat as the
11 plaintiff.
12 MR. FLYNN: That was acceptable to us.

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13 MR. LONG: There was at least one issue we could
14 not agree on.

15 THE COURT: I was going to ask you if there were
16 any objections.

17 MR. FLYNN: There is one area I know we
18 definitely object to. The remaining part --

19 THE COURT: I don't have the transcript --

20 MR. FLYNN: Just to let you know, Judge, other
21 than this, there are some others I think if we get a
22 five minute break, Doug and I can probably resolve.

23 THE COURT: This is on page 21?

24 MR. FLYNN: This one we knew we were not going
25 to resolve, page 21, line 15 through line 25. It was

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1 606

2 not designated --

3 THE COURT: I'm sorry, page 21?

4 MR. FLYNN: Page 21, line 15 through 21.

5 THE COURT: Are you on the transcript page?

6 MR. FLYNN: I'm reading exactly from the
7 transcript page, so that would be page 4 on the
8 condensed.

9 THE COURT: All right. I found page 4. Now,
10 what --

11 MR. FLYNN: Page 21 begins at the very bottom

12 politico trial transcript 11-21-03
corner, so if you go to the middle column, if you go
13 to line 15, and it --

14 THE COURT: Do you ever recall seeing --

15 MR. FLYNN: -- any warnings on the pack of
16 cigarettes. It is all about cigarette warnings.

17 THE COURT: How far -- where does that end?

18 MR. FLYNN: Just to line -- line 25. It only
19 goes ten lines.

20 THE COURT: Okay, I see it.

21 (Recess taken from 2:20 p.m. to 2:30 p.m.)

22 THE COURT: Why don't I state for the record,
23 there's been an issue concerning the proposal by
24 plaintiff to read -- I'm sorry, by the defendant to
25 read, is that correct? Mr. Long, you're going to

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1 607
2 object to this part?

3 MR. LONG: That's correct, your Honor.

4 THE COURT: Whether or not -- a proposal of the
5 defendant to have included in the deposition
6 testimony the following from page 21, after a series
7 of questions concerning Mr. Polito's smoking history,
8 at line 15:

9 "Question: Do you ever recall seeing any
10 warnings on the packs of cigarettes when you were
11 smoking.

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12

"Answer: Sure.

13

"Question: okay. Do you recall what those
14 warnings said.

15

"Answer: The surgeon says your health could be
16 impaired.

17

"Question: Did those warnings have any impact
18 on your decision to quit smoking.

19

"Answer: Who pays attention to them?"

20

I believe those are the series of questions and
21 answers.

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MR. LONG: That's the disputed testimony, your
23 Honor, that's correct.

24

THE COURT: Do you want to be heard on that?

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MR. THACKSTON: I guess the first thing I want

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to hear would be the objection to it. What's the
3 nature of the objection?

4

MR. LONG: It is irrelevant. I object to it on
5 relevancy grounds.

6

MR. FLYNN: I disagree. Obviously the issue of
7 warnings is relevant, as to what position the
8 plaintiff would take as to warnings, i.e. any type of
9 warnings, is clearly a relevant issue in the mind of
10 the jury.

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THE COURT: Is that it?

MR. LONG: Yeah, I can't remember the exact testimony about when Mr. Polito smoked, but I don't think it was any time near when he was exposed to asbestos, and I just have an objection about relevancy and the remoteness of the warnings on the cigarette packages from when the warnings could have been on the packages of brake shoes that he was exposed to.

I'm not sure that the testimony of a seventy-nine year old dying man about this regarding warnings on cigarette packages forty-four days before he dies is relevant to the issue of what he would have done some fifty years earlier.

THE COURT: Well, the Court is ruling those

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questions and answers will be permitted. Is that the only issue?

MR. FLYNN: I think we are resolved.

MR. VON OISTE: Your Honor, if we could just have one second.

THE COURT: Sure.

(Discussion held off the record.)

(Jury present at 2:40.)

THE COURT: Members of the jury, we will be

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11 ready in just a moment, but while we're waiting, let
12 me again instruct you as I did yesterday what is
13 going to be offered at this time is deposition
14 testimony of Mr. Polito. You remember yesterday you
15 saw a video of a deposition. I believe this
16 particular deposition was taken in the time period
17 before the video deposition, and it is not a video.
18 It is in question and answer form. Nevertheless, I
19 give you the same instructions, namely that it was
20 testimony given out of court. Counsel for all
21 parties were present, had the opportunity to conduct
22 direct examination, cross-examination, and the
23 testimony should be considered by you as if
24 Mr. Polito were actually testifying in court.
25 Again, this has been referred to throughout the

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1 610
2 trial as deposition testimony. Technically it is an
3 examination before trial, or attorneys, judges
4 frequently refer to it as an EBT. All those terms
5 are interchangeable. It means the same thing.
6 Again, you should receive the evidence as if the
7 witness were to testify.

8 MR. LONG: Your Honor, may I approach with one
9 of the defense attorneys?

10 polito trial transcript 11-21-03
 THE COURT: Sure.
11 (Discussion held off the record at the side bar.)
12 THE COURT: Counsel, do you want to approach?
13 (Discussion held off the record at the side bar.)
14 THE COURT: All right, members of the jury, we
15 will let you know when everyone is ready.
16 (Jury excused at 2:45 p.m.)
17 THE COURT: All right, Counsel, I had reserved
18 decision on an offer, I believe of Exhibit 1, which
19 was the videotape deposition.
20 MR. LONG: Right, right.
21 THE COURT: And at this time I'm going to
22 overrule defense objection, receive Exhibit 1 into
23 evidence and direct that if, during deliberations,
24 the jury wishes to rehear the testimony, then they
25 will be brought back to the courtroom, and the

1 611
2 exhibit would be played for them.
3 You should know that the -- that a transcript
4 was not made of the testimony.
5 MR. LONG: We have a transcript that goes with
6 the video if you would like to have it, your Honor.
7 THE COURT: But I'm saying the court reporter
8 did not make a transcript.
9 MR. LONG: Okay, thank you.

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10 (Jury present at 3:00 p.m.)

11 THE COURT: The format is Mr. Von Oiste is going
12 to ask questions. Mr. Long is going to respond.
13 Obviously he's not under oath. It is the deposition
14 testimony of the witness you will be hearing.

15 (Whereupon, excerpts of the Examination Before Trial of
16 Salvatore Polito were read to the jury.)

17 THE COURT: Mr. von Oiste, I think we will stop.

18 MR. VON OISTE: Okay. I should say thank you.

19 THE COURT: Members of the jury, we need to
20 recess at this point, and I will simply ask you to
21 come back on Monday morning at 9:30, and you may want
22 to -- Mondays are a day when we select -- actually,
23 next week, no problem Monday. Strike that. What we
24 are talking about is we normally have a lot of jurors
25 report on Monday because of criminal trials, but I

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1 612

2 think there are very few if any, and if there are
3 trials, I am in trouble, because my secretary is on
4 jury duty beginning Monday.

5 So I hope you'll have a pleasant weekend, and
6 please adhere to the instructions I gave to you, and
7 we will see you back in this courtroom at 9:30 Monday
8 morning.

polito trial transcript 11-21-03
(Proceedings adjourned at 4:20 p.m.)

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COURT REPORTER'S CERTIFICATION

I, Judy A. Ging, do hereby certify that I am an Official
Court Reporter of the Seventh Judicial District, at Rochester,
County of Monroe, State of New York, duly appointed;
That on the 21st day of November, 2003, before the

8 polito trial transcript 11-21-03
9 Honorable Raymond E. Cornelius, Supreme Court Justice, I
10 reported in machine shorthand the proceeding had in the Supreme
11 Court, in the matter of CONSTANCE POLITO V. DAIMLERCHRYSLER
12 CORPORATION, et al., Defendants;

13 And that the transcript, herewith numbered pages 509
14 through 611, inclusive, is a true, accurate, correct and
15 complete record of those machine shorthand notes.

16

17

18

19

Judy A. Ging, RDR, CSR, CRR

20

21 Dated at: Rochester, New York,

22 this _____ day of _____, 2003.

23

24

25

Index No. 114120-06 Year R/J No. Hon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK CITY ASBESTOS LITIGATION,

This Document Relates To: CHRISTIAN HOLINKA,

Plaintiff,

-against-

A.W. CHESTERTON et al.,

Defendants.,

ORDER TO SHOW CAUSE, CERTIFICATION, AFFIRMATION IN SUPPORT OF DEFENDANTS MOTION IN
LIMINE AND MEMORANDUM OF LAW IN SUPPORT"

MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.

Attorneys for Univar USA Inc. and VWR International, Inc.

Office and Post Office Address, Telephone

530 Saw Mill River Road

Elmsford, New York 10523

(914) 345-3701

Signature (Rule 130-1.1-a)

Print name beneath

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorneys for:

Please take notice

☐ **NOTICE OF ENTRY**

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

☐ **NOTICE OF SETTLEMENT**

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.

Office and Post Office Address

530 Saw Mill River Road